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THE UNDERSTANDINGS OF INTERNATIONAL LAW

The scholarly article on the subject of "The Understandings of International Law," by Doctor Quincy Wright in the October number of this JOURNAL,¹ serves to clarify the question raised in the editorial of October, 1919,² regarding the significance of this singular phrase in the preamble of the Covenant of the League of Nations.

Doctor Wright discloses how the term "understandings" has been elsewhere employed by the assumed draftsman of the preamble, though employed in a rather loose manner as contrasted with the concise use of the same term by Dicey in his distinction between "the *understandings* of politics" and "the *commands* of law."³

Doctor Wright is undoubtedly correct in his argument that all law rests ultimately on assent through the exercise of understanding and reason. Once that intelligent assent is accorded, however, law passes into a stage beyond discussion and understanding implying a possible ground for disagreement. We are thinking of a law which has been definitely crystallized by judicial decisions as well as by a long line of established precedents; of a law whose principles have been so clearly enunciated by publicists as to admit of no possibility of *misunderstanding*.

While not assenting to all of his deductions, we may accept as entirely sound Doctor Wright's conclusions: "Thus from the context we gather that 'the understandings of international law' consist of that portion of international law not embodied in formal principles of justice, but sanctioned by general assent and dealing especially with the organization of international society" (page 569). And again: "The constitution of the League of Nations is to be built up of understandings in the twilight zone of law and morality. . . ." (page 580).

It is quite apparent, therefore, that those who drafted the Covenant did not have in mind the great body of existing international law which has passed beyond the stage of discussion and understanding. They were thinking of "the organization of international society," of "the constitution of the League of Nations." In other words, the members of the League of Nations will endeavor to carry out faithfully the *understandings* they may have reached concerning this attempt to organize the family of nations. They have ignored, in the main, the great problem of the firm establishment and orderly development of the existing body of international law.

Doctor Alejandro Alvarez, the distinguished Chilean publicist, has brought out most clearly this distinction between an international public law for the organization of nations, and the pure law of nations, in his most suggestive "Communication to the Academy of Moral and Political Sciences" of October 4, 1919.⁴ He has rendered an important service in repeatedly drawing attention to the fact that, just as Europe has its own political system, so the American Continent has its own peculiar political system, infelicitously characterized in

¹ Vol. 14, p. 565.

² Vol. 13, p. 739.

³ This JOURNAL, Vol. 14, p. 574.

⁴ *Revue des Sciences politiques* du 15 février 1920.

Article XXI of the Covenant as a "regional *understanding*." (Unfortunately there exists no general understanding as to the meaning of the Monroe Doctrine, which the Latin-Americans would gladly formulate as a Pan-American constitutional principle rather than as an expression of policy on the part of the United States.)

To characterize the political organization of Europe or of America as "understandings of international law" would obviously be erroneous. It may be that Europe and America will evolve highly developed political organizations, but these will have as little to do with the great body of international law as the constitutional law of the United States has to do with the Common Law.

Our quarrel, therefore, is not one of mere terminology. Doctor Wright has well said that the term "understandings of international law" as used in the preamble of the Covenant may be taken as the key to the whole project (page 565). There is grave danger lest the main task of vindicating the established principles of international law should be obscured; that in building up an international organization the vastly more important task of laying its foundation on the bedrock of law should be neglected. We must resolutely combat the vicious notion that a super-government may impose sovereign commands, rather than respect the behests of a law which has been created in a natural way through the experience and assent of nations, and the orderly, logical evolution of judicial interpretation and application.

Herein lies the great strength of the position taken by that great jurisconsult, Mr. Root, in his solicitude for frequent conferences of a legislative character for the strengthening of international law, and for a true court of justice which shall guarantee the *jural* evolution of the law of nations, as opposed to *diplomatic* "understandings" as to the obligations governing the conduct of nations. This is no mere verbal quibble: the issue is fundamental.

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THE TACNA-ARICA DISPUTE AND THE MONROE DOCTRINE

Whatever may be the ultimate effect of that amendment to the League of Nations Covenant by which was avowed the validity of the Monroe Doctrine as a "regional understanding," the attempt to bring the Tacna-Arica dispute before the first League Assembly has drawn attention to the possibility of new glosses upon, and interpretations of, this protean "shibboleth." On the one hand, it might be asserted that Article 21 as amended amounts to a reception of the Monroe Doctrine into international law; upon the other hand, the position might be taken that it remains so far outside the domain of international law that no matter involving it can come within the cognizance or jurisdiction of the League or of any of its instrumentalities. If the latter view prevails, then it would be to the advantage of certain states affected to enlarge the content of the Doctrine so as to avoid having the League consider any question of an intra-American character.

That states may voluntarily refer a question between them to the head of a